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EXAMINER

FETSUGA, ROBERT M

ART UNIT

PAPER NUMBER

3751

DATE MAILED: 02/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/700,714

Applicant(s)

SMITH, LANNY R.

Examiner

Robert M. Fetsuga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 November 2003 and 07 March 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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1. The proposed drawing correction filed on December 22, 2005 is disapproved as Fig. 5 thereof is not based upon the immediate prior version.

2. The drawings are objected to because reference numeral "57" (par. 0017 ln. 5) is missing from Fig. 3, reference numerals "66" and "68" (par. 0018 lns. 4 and 6) are missing from Fig. 4A, reference numeral "87" (par. 0020 ln. 2) is missing from Fig. 4B, and reference numeral "107" (par. 0021 ln. 2) is missing from Fig. 4C. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion

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of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "removable coupling" set forth in claim 1, "removable mating" set forth in claim 11, "bottom portion" set forth in claim 17, "top portion" set forth in claim 18, and subject matter set forth in claims 34 and 37, could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

4. Claims 1, 3, 11, 13, 14, 18, 19, 24-33 and 39-43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is unclear as to the language "adapted to be removably coupled to the form member and to removably couple the form member to the elongate track" (lns. 6-7). This subject

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matter is understood from the instant disclosure to be elements 50, 51, 53, 60 and 62. However, elements 50, 51, 60 and 62 are recited in claims 2, 6, 7 and 34. Therefore, the metes and bounds of the language of claim 1 is not ascertainable.

Claim 11 is unclear as to the language "adapted to removably mate to the elongated track" and "adapted to removably mate to the form member" (lns. 6-7). This subject matter is understood from the instant disclosure to be elements 50, 60 and 62. However, elements 50, 60 and 62 are recited in claims 12, 15, 17 and 37. Therefore, the metes and bounds of the language of claim 11 is not ascertainable.

Claim 1 is unclear as to whether the "swimming pool" is intended to be part of the claimed combination since structure of the "apparatus" is defined as being connected thereto (last line), but no positive structural antecedent basis therefor has been defined. Claim 11 is similarly indefinite.

Claim 3 is redundant to claim 2, claim 13 is redundant to claim 11, claim 14 is redundant to claim 11, and claim 19 is redundant to claim 11.

Claim 24 is unclear as to whether the "swimming pool" is intended to be part of the claimed combination since structure of the "edging" is defined as being connected thereto (lns. 4 and 7), but no positive structural antecedent basis therefor has

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been defined. Claim 31 is similarly indefinite. Simply stated, is the swimming pool intended to be subject matter excluded from the public by the claims, or not?

Claim 24 is ambiguous as attempting to embrace two different statutory classes of invention. The claim preamble recites a "method", but the body thereof merely recites product/apparatus limitations. See IPXL Holdings LLC v. Amazon.com Inc. 77 USPQ2d 1140. Claim 31 is similarly indefinite.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-33, 35, 36, 38, 40, 42 and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Loftin.

Considering claims 1, 11, 24 and 31 as drawn to the edging constructing apparatus per se, the Loftin reference discloses an apparatus comprising: a form member 24,48 including an edge forming surface 54, a support member mating portion (at 50) and an alignment member 70; a support member 46 including a form member mating portion (at 50) and a "track" mating portion (at 52); and a coupling member 50, as claimed. Re claim 1, the Loftin form member is "reusable" (i.e. able to be reused). Re claims 1 and 24, the Loftin apparatus is capable of being used with a swimming pool track in the functionally recited manner. Re claims 21-23, the Loftin form member produces the recited shapes (Fig. 8).

7. Claims 1-33, 35, 36, 38, 40, 42 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loftin and Hotz.

Considering claims 1, 11, 24 and 31 as drawn to the combination of a swimming pool and edging constructing apparatus, although the form member of the Loftin edging constructing apparatus does not include a track and associated mating portion, attention is directed to the Hotz reference (Fig. 3) which discloses an analogous edging constructing apparatus which further includes a form member 28 having a track 10 and associated mating portion 22a,29. Therefore, in consideration of Hotz, it would have been obvious to one of

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ordinary skill in the edging constructing apparatus art to associate a track and mating portion with the Loftin form member in order to enable retaining a pool liner.

8. Claims 1-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's admitted prior art and Loftin.

Applicant discloses as admitted prior art (apa) an edging constructing apparatus (and swimming pool), as claimed, except for the form member being two separate portions removably coupled by a clamp. Attention is directed to the Loftin reference which discloses an analogous apparatus which further includes a form member 26,44 having two separate portions 24,48 and 46 removably coupled by a clamp 50. Therefore, in consideration of Loftin, it would have been obvious to one of ordinary skill in the edging constructing apparatus art to associate two separate portions removably coupled by a clamp with the apa form member in order to enable adjustment.

9. Applicant's arguments with respect to the claims at pages 19-25 of the response have been considered but are moot in view of the new ground(s) of rejection.

10. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.



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11. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.

A handwritten signature in black ink, appearing to read "Robert M. Fetsuga", with a stylized flourish at the end.

Robert M. Fetsuga  
Primary Examiner  
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